

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

**751 Twinbrook Parkway
Rockville, MD 20851**

(240) 777-6600

<http://www.montgomerycountymd.gov/boa/>

CASE NO. A-6697

PETITION OF OMAR AND MAYRA AMADOR

NOTICE OF HEARING

Please take notice that the Board of Appeals for Montgomery County, Maryland, will hold a public hearing, using technology (Microsoft Teams) in lieu of in-person attendance due to COVID-19, **on Wednesday, the 5th day of May, 2021, at 9:30 a.m.**, or as soon thereafter as this matter can be heard, on the application filed pursuant to Section 59-7.3.2.A of the Zoning Ordinance. Instructions for remote participation in this hearing will be posted on the Board's webpage (address above) once they are available.

The proposed construction, an accessory structure (garage), requires a variance of nine (9) feet as it is within six (6) feet of the right side lot line. The required setback is fifteen (15) feet, in accordance with Section 59-4.3.4.B.2 of the Zoning Ordinance.

The subject property is Parcel P762, Pembroke Subdivision, located at **26900 Howard Chapel Drive, Damascus, Maryland, 20872** in the RC Zone. (Tax Number Account No. 00933977)


Notices forwarded this 2nd day of April, 2021, to:

Omar and Mayra Amador
Charles Frederick, Esquire, Associate County Attorney
Washington Suburban Sanitary Commission
State Highway Administration
County Board of Education
Contiguous and confronting property owners
Local Citizens Associations

EXHIBIT NO. _____

8(b)

County Board of Appeals


Barbara Jay
Executive Director

All parties who make submissions, after an initial filing, in Special Exception, Variance and Administrative Appeals cases, must furnish copies of the submission to all other parties in the case. For the purpose of this requirement, a party includes: (1) Counsel of record who have formally entered their appearance; (2) Any person to whom the Board of Appeals has granted Intervener status; and (3) The Applicant, Petitioner or Appellant in the case.

Submissions must be accompanied by a written statement certifying that copies have been sent to all parties. Effective September 6, 2002, failure to supply such written certification will result in refusal of the submission.

Case files are available for public review at the office of the Board of Appeals, Monday through Friday, 8:30 a.m. – 4:00 p.m.

**BOARD OF APPEALS
FOR
MONTGOMERY COUNTY, MARYLAND
(240) 777-6600**

Docket No. A- 6697
Date Filed 2-23-21
Hearing Date 5-5-21
Time 9:30 a.m.

PETITION FOR VARIANCE UNDER ZONING ORDINANCE

(Please Note Instructions on Reverse Side)

Name of Petitioner(s): Omar A. Amador & Mayra E. Amador
Address of Petitioner(s): 26900 Howard Chapel Dr City Damascus Zip 20872
Description of property involved: Lot _____ Block _____ Parcel P762 Subdivision 0001
Street and No. Howard Chapel Dr City Damascus Zip 20872 Zone Classification _____
Appellant's present legal interest in above property (check one): Tax Account No. _____
☒ Owner (including joint ownership) _____ Other (describe) _____

If not owner, name and address of owner:

What variance is requested, and what is the pertinent section of the Zoning Ordinance? Exemption From Controls. 9.00 Ft. Variance as it is within 6.00 Ft of the right side lot line. The required setback is 15.00 Ft.

Check existing reason(s) why the Ordinance requirement(s) would result in practical difficulties for property owner:

_____ narrowness _____ shallowness _____ shape _____ topography ☒ other extraordinary situations or conditions peculiar to this property.

Describe this property's extraordinary situation or peculiar conditions compared to neighboring properties: The proposed development uses an existing legal non-conforming structure & it substantially conforms with traditional development pattern of a street.

How will the peculiar condition described above result in practical difficulty if the requested variance is not granted? The required set back is 15.00 Ft. and if not granted, the existing accessory structure will need to be moved 9.00 Ft of the right side lot line.

Date of recording of plat of present subdivision: 2019; or, if property is un-subdivided, date on which deed recorded, or state that such deed was first recorded prior to March 6, 1928: _____

Has any previous variance application involving this property been made to the Board of Appeals?

If so, give Case Number(s): No

I have read the instructions on the reverse side of this form and am filing all required accompanying information. I hereby affirm that all of the statements and information contained in or filed with this petition are true and correct.

Name of Attorney/Agent (Print Name next to Signature)	<u>Omar Amador</u>	Signature of Petitioner(s) (Print Name next to Signature)	<u>Mayra Amador</u>
Address of Attorney		Address of Petitioner	<u>26900 Howard Chapel Dr. Damascus MD 20872</u>
Phone Number (OVER)		Home Phone	<u>240.899.9448</u>
		Work Phone	<u>(301) 668-2662</u>
		Email Address	<u>Amador418@gmail.com</u>

EXHIBIT NO. 1

LIST OF ABUTTING AND CONFRONTING PROPERTY OWNERS

(Please see information on reverse side)

Case Number:

	NAME	MAILING ADDRESS (Please add Zip Code)
PETITIONER/ APPELLANT		
ATTORNEY/ AGENT		
PROPERTY OWNER	Omar Amador Mayra Amador	26900 Howard Chapel Dr. Damascus MD 20872

NOTE: Because this list will be used to help generate the Board's mailing list for this case, please provide the Applicant's name and address, that of any attorney or agent hired by the Applicant, and the name of the property owner (if different from the Applicant), in addition to the list of abutting and confronting property owners. You may use additional sheets if needed.

ABUTTING AND CONFRONTING PROPERTY OWNERS

	NAME	ADDRESS (Please add Zip Code)	LOT/PARCEL	BLOCK
1	Thomas L. Mix	26844 Howard Chapel Dr Damascus MD 20872	Lot-18 Parcel-0000	B
2	Paul O. Trench	26902 Howard Chapel Dr. Damascus MD 20872	Parcel P750	
	George A. Herndon	8558 Gue Rd.	Lot-27	B
3	J. A. Herndon	Damascus MD 20872		

JUSTIFICATION STATEMENT

Property: 26900 Howard Chapel Dr Damascus Md 20872

Land Area: Parcel 762 has a land area of .71 +/- acres.

Petitioner: Omar Amador- Owner

Request: Accessory Structure Exemption from controls. Section 59-4.3.4.B.2..

Zone: RC

Table of contents

- I. Factual Background**
- II. Reason for Appeal**
- III. Applicable portion of Zoning Code**
- IV. Evidence Supporting Variance**

I. Factual Background

Petitioner purchased parcel 762 zoned RC. This parcel had a dwelling on it (hereinafter **"Accessory Structure"**) that was used in the past as a garage/workshop. The Accessory Structure was not safe to use since it had cinder blocks walls cracked, the wood supporting the roof was old and rotting. Petitioner renovated and rebuilt the Accessory Structure to turn it into an acceptable garage/storage. Upon discovering from MCDPS that the Accessory Structure needed a permit to be renovated, petitioner submitted a residential building application (application #916007). But the permit was denied.

II. Reason for Appeal

On a letter dated 08/18/2020 The Department of Permitting Services could not issue a building permit for the property without a variance from the Montgomery County Board of Appeals.

III. Applicable Portion of Zoning Code

Petitioner is seeking one variance for the Accessory Structure under the Montgomery County Zoning Code. The proposed construction requires a variance from the Exemption from Controls. In accordance with Section 59-4.3.4.B.2., the required setback is 15.00ft. and the proposed construction requires a 9.00ft. variance as it is within 6.00ft. of the right-side lot line.

IV. Evidence Supporting Variance

Pursuant to section 59.7.3.2.E of the Zoning Ordinance the Board of Appeals must make affirmative findings on each of the following requirements (only one of the E.2.a. requirements need to be met) and the following evidence will support those findings.

Section E.2.a. v. the proposed development substantially conforms with the established historic or traditional development pattern of a street or neighborhood.

Petitioner's house is on Howard Chapel Dr, and many of the houses on Howard Chapel Dr are complimented with accessory structures similar to the one in question. The Accessory Structure would be in substantial conformity with the development pattern of the neighborhood because there are accessory structures throughout.

Section E.2.b the special circumstances or conditions are not the result of actions by the applicant.

Per the State Department of Assessment and Taxation Real Property Search website, the primary structure for the subject property was built in 1950 and the record shows a detached garage as part of the property. Petitioner has no knowledge when the Accessory Structure was originally built, but it was built very close to one of the property lines on a .71 acre lot when there was ample room to build it from side setbacks. Petitioner purchased parcel 762 in late 2017. The proposed Accessory Structure was always there, and the special circumstances or conditions were a not result of actions by Petitioner.

Section E.2.c the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with this Chapter would impose due to the unusual or extraordinary situations or conditions on the property.

Without the variance, Petitioner could not get a permit to be able to finish the Accessory Structure. There is and always was an existing Accessory Structure on the Subject Property. Without the variance, the Accessory Structure would have to be demolished and relocated to meet the required side setback of 15.00ft. presenting a practical difficulty and unusual hardship. It is an unusual situation Petitioner is faced with.

Section E.2.d the variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan.

The variance does not affect the integrity or intent of the general plan since the proposed Accessory Structure was always there according to the State Department of Assessment and Taxation Real Property and a survey made on 09/29/2017 by Duley and Associates, Inc. Other homes within the same street/neighborhood already have garages similar to the one proposed.

Section E.2.e granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties.

The accessory Structure is far from all abutting or confronting properties and all but one of the adjoining property owners. The closest house to the Accessory Structure is about 30.00ft. and there is a 6.00ft. tall privacy fence between them. This is not a new structure but an existing structure that sits on .71 +/- acres and this is the smallest lot in the neighborhood.

Sincerely,

Omar Amador

Statement of justification outlining how the proposed development satisfies the criteria for approving the variance

According to the Montgomery County Zoning Ordinance Chapter 59.7.3.2.E.2.a

ii. the proposed development uses an existing legal nonconforming property or structure.

The garage was really old, wood was rotting, walls were cracked and it wasn't safe for my children.

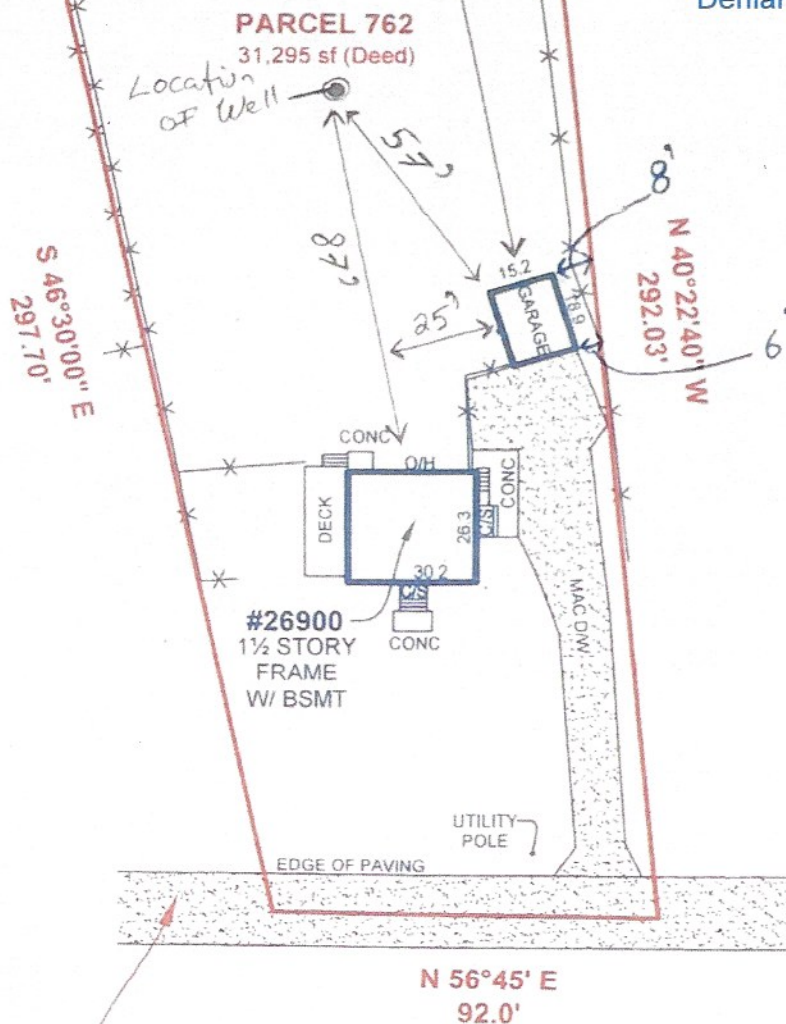
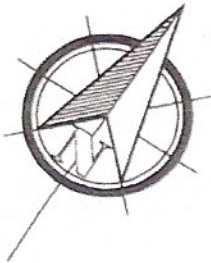
v. the proposed development substantially conforms with the established historic or traditional development pattern of a street or neighborhood.

LIST OF HOMES THAT ARE ON THE SAME STREET WITH IN 3 MINUTES FROM PETITIONERS HOUSE WITH SIMILAR ACCESSORY STRUCTURES NOT MEETING REQUIRED SETBACKS. NOTE: HIGHLIGHTED PROPERTIES HAVE AN ACCESSORY STRUCTURE SIMILAR OR LARGER THAN WHAT THE PETITIONERS ARE REQUESTING VARIANCE FOR.

- 26808 HOWARD CHAPEL DR
DAMASCUS, 20872
- 26812 HOWARD CHAPEL DR
DAMASCUS, 20872
- 26816 HOWARD CHAPEL DR
DAMASCUS, 20872
- 26809 HOWARD CHAPEL DR
DAMASCUS, 20872
- 26832 HOWARD CHAPEL DR
DAMASCUS, 20872
- 26825 HOWARD CHAPEL DR
DAMASCUS, 20872
- 26908 HOWARD CHAPEL DR
DAMASCUS, 20872
- 26913 HOWARD CHAPEL DR
DAMASCUS, 20872
- 26917 HOWARD CHAPEL DR
DAMASCUS, 20872

Melissa Goutos

Denial Lettter #376553



HOWARD CHAPEL DRIVE

LOCATION DRAWING OF:

#26900 HOWARD CHAPEL DRIVE
PARCEL 762 TAX MAP GY11

N/F PROPERTY OF
FEDERAL HOME LOAN MORTGAGE ASSOC.

LIBER: 52275 FOLIO: 203
MONTGOMERY COUNTY, MARYLAND

SCALE: 1"=50' DATE: 09-29-2017

DRAWN BY: CP FILE #: 177575-669

LEGEND:

-X- FENCE
B/E BASEMENT ENTRANCE
B/W BAY WINDOW
BR BRICK
BRL BLDG. RESTRICTION LINE
BSMT BASEMENT
C/S CONCRETE STOOP
CONC CONCRETE
D/W DRIVEWAY
FR FRAME
MAC MACADAM
O/H OVERHANG
PUE PUBLIC UTILITY ESMT.

COLOR KEY:

(RED) RECORD INFORMATION
(BLUE) IMPROVEMENTS
(GREEN) ESMTS & RESTRICTION LINES

A Land Surveying Company

DULEY

and
Associates, Inc.

Serving D.C. and MD.

14604 Elm Street, Upper Marlboro, MD 20772

Phone: 301-888-1111

Fax: 301-888-1114

Email: orders@duley.biz

On the web: www.duley.biz

SURVEYOR'S CERTIFICATE

I HEREBY STATE THAT I WAS IN RESPONSIBLE CHARGE OVER THE PREPARATION OF THIS DRAWING AND THE SURVEY WORK REFLECTED HEREIN AND IT IS IN COMPLIANCE WITH THE REQUIREMENTS SET FORTH IN REGULATION 12 CHAPTER 09.13.06 OF THE CODE OF MARYLAND ANNOTATED REGULATIONS. THIS SURVEY IS NOT TO BE USED OR RELIED UPON FOR THE ESTABLISHMENT OF FENCES, BUILDING, OR OTHER IMPROVEMENTS. THIS PLAT DOES NOT PROVIDE FOR THE ACCURATE IDENTIFICATION OF PROPERTY BOUNDARY LINES, BUT SUCH IDENTIFICATION MAY NOT BE REQUIRED FOR THE TRANSFER OF TITLE OR SECURING FINANCING OR REFINANCING. THIS PLAT IS OF BENEFIT TO A CONSUMER ONLY INsofar as IT IS REQUIRED BY A LENDER OR A TITLE INSURANCE COMPANY OR ITS AGENTS IN CONNECTION WITH THE CONTEMPLATED TRANSFER, FINANCING OR REFINANCING. THE LEVEL OF ACCURACY FOR THIS DRAWING IS 2". NO TITLE REPORT WAS FURNISHED TO NOR DONE BY THIS COMPANY. SAID PROPERTY SUBJECT TO ALL NOTES, RESTRICTIONS AND EASEMENTS OF RECORD. BUILDING RESTRICTION LINES AND EASEMENTS MAY NOT BE SHOWN ON THIS SURVEY. IMPROVEMENTS WHICH IN THE SURVEYORS ADVICE ARE NOT TO BE SHOWN ON THIS SURVEY.

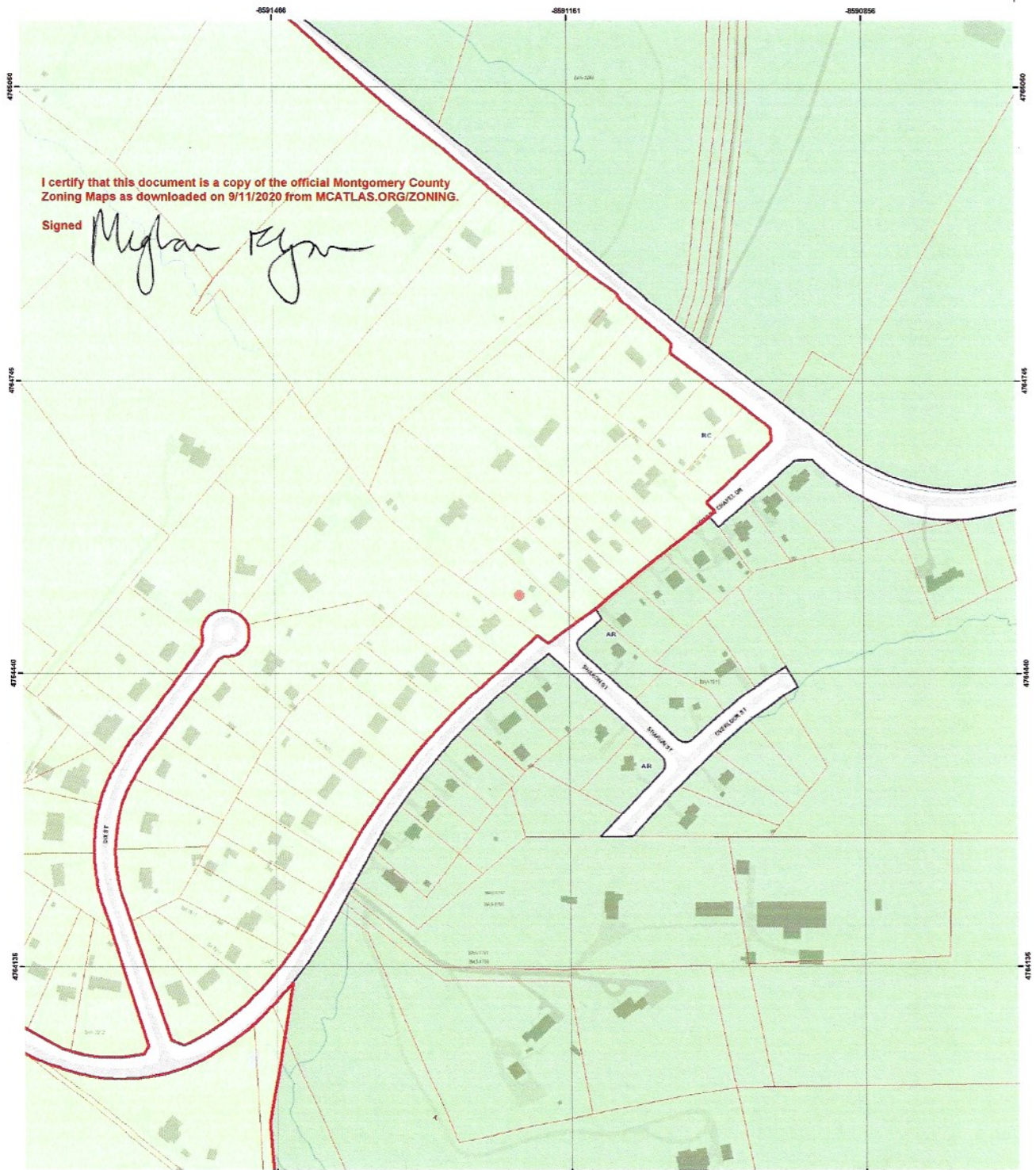
DULEY & ASSOC.

WILL GIVE YOU A 100%
FULL CREDIT TOWARDS
UPGRADING THIS
SURVEY TO A
"BOUNDARY/STAKE"
SURVEY FOR ONE
YEAR FROM THE DATE

NOTES CONCERNING ZONING & RIGHTS-OF-WAY
 1. Zone boundaries shown on this map are for informational purposes only and do not constitute a legal description. A legal description of a property must refer to the plat or other method of subdivision can be included in map amendments for clarity purposes; rights-of-way included in a map amendment boundary is the new zoning assigned to the map amendment.

I certify that this document is a copy of the official Montgomery County Zoning Maps as downloaded on 9/11/2020 from MCATLAS.ORG/ZONING.

Signed *Mylan Ryan*



MONTGOMERY COUNTY ZONING MAP

The Maryland-National Capital Park and Planning Commission

Montgomery County Planning Department

0 210 420 630 840 1,050 Feet



Printed: 9/11/2020

1 inch = 211 feet



Account #	00939077	Special Protection Area	N/A
Address	26900 HOWARD CHAPEL DR DAMASCUS, 20872	Urban District	N/A
Landuse	Single Family Detached	Enterprise Zone	N/A
Legal Description	PERMISIORE	Atty & Ent. District	N/A
Zone	RC	Special Tax District	N/A
Overlay Zone	N/A	Black/PoP Priority Area	N/A
TDR Overlay Zone	N/A	Urban Renewal Area	N/A
Parking District	N/A	Metro Station Policy Area	N/A
CDD	N/A	Priority Funding Area	N/A
Parcel, Lot, Block	P702, N/A, N/A	Septic Tier	Tier 3: Septic
		Municipality	N/A
		Master Plan	DAMASCUS MASTER PLAN
		Historic Site/District	N/A

WSSC Grid	Z01NW00
Map Amendments	G-299 G-514 G-654 G-958
Water/Sewer Categories	W-6 / S-6

EXHIBIT NO.

7



DEPARTMENT OF PERMITTING SERVICES

Marc Elrich
County Executive

Mitra Pedoeem
Director

BUILDING PERMIT DENIAL

The Department of Permitting Services cannot issue a building permit for the property indicated below without a variance from the Montgomery County Board of Appeals.

NAME: OMAR AMADOR

ADDRESS: 26900 HOWARD CHAPEL DR
DAMASCUS, MD 20872

LOT - BLOCK: N/A - N/A

ZONE:RC

THE VARIANCE REQUEST IS FOR

N
N
N

EXISTING STRUCTURE
NON-CONFORMING
NEW SINGLE-FAMILY DWELLING

Y
N

PROPOSED STRUCTURE
NON-COMPLYING

TYPE OF CONSTRUCTION:

N
N
N
Y
N

ROOM ADDITION
PORCH
SHED
ACCESSORY STRUCTURE
OTHER

N
N
N
Y

SWIMMING POOL
DECK
FENCE/RETAINING WALL
GARAGE/CARPORT

The proposed construction requires a 9.00 ft. variance as it is within 6.00 ft. of the right side lot line.

The required setback is 15.00 ft. in accordance with Section 59-4.3.4.B.2..

The required sum of both side yards is 0.00 ft. in accordance with Section 59-.

The proposed construction reduces the sum of both sides to 0.00 ft., creating a violation of 0.00 ft.

The proposed construction requires a variance from the Exemption from Controls, Section 59-B as follows:

N/A

The proposed construction of a garage that will not meet the reqd side setback.

Melissa Goutos

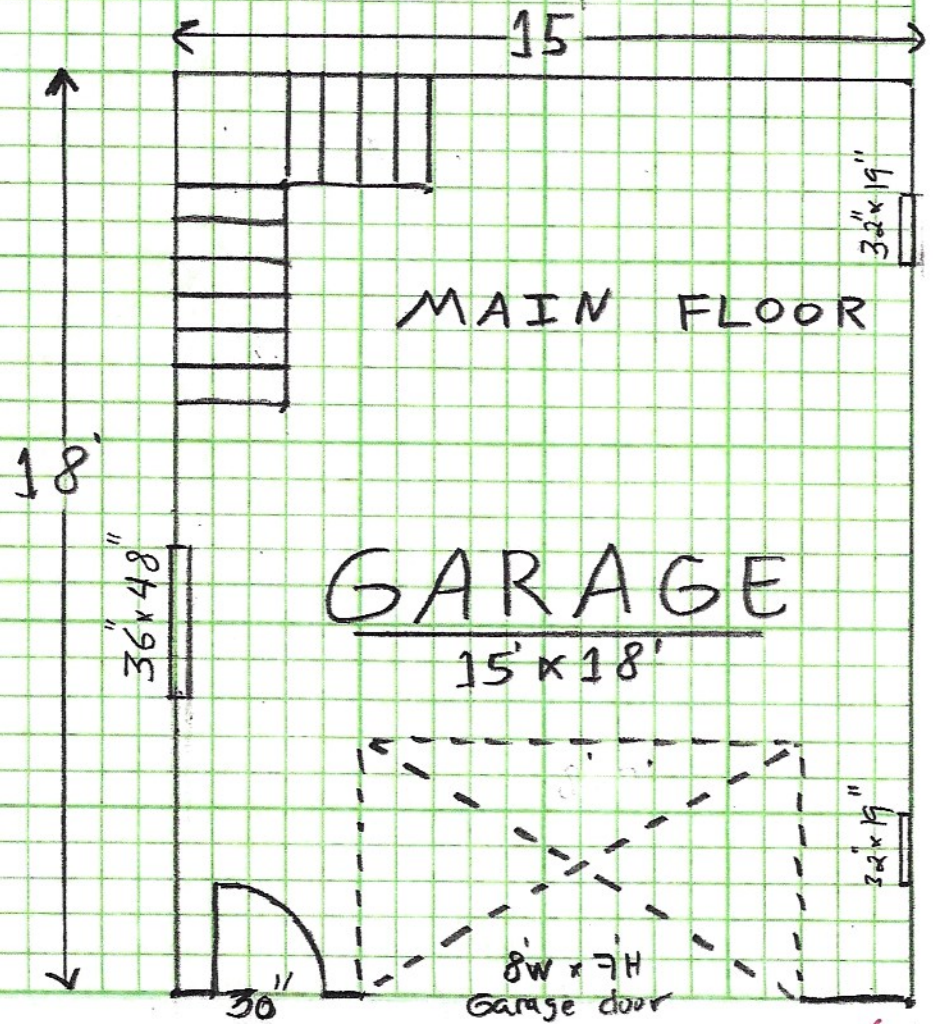
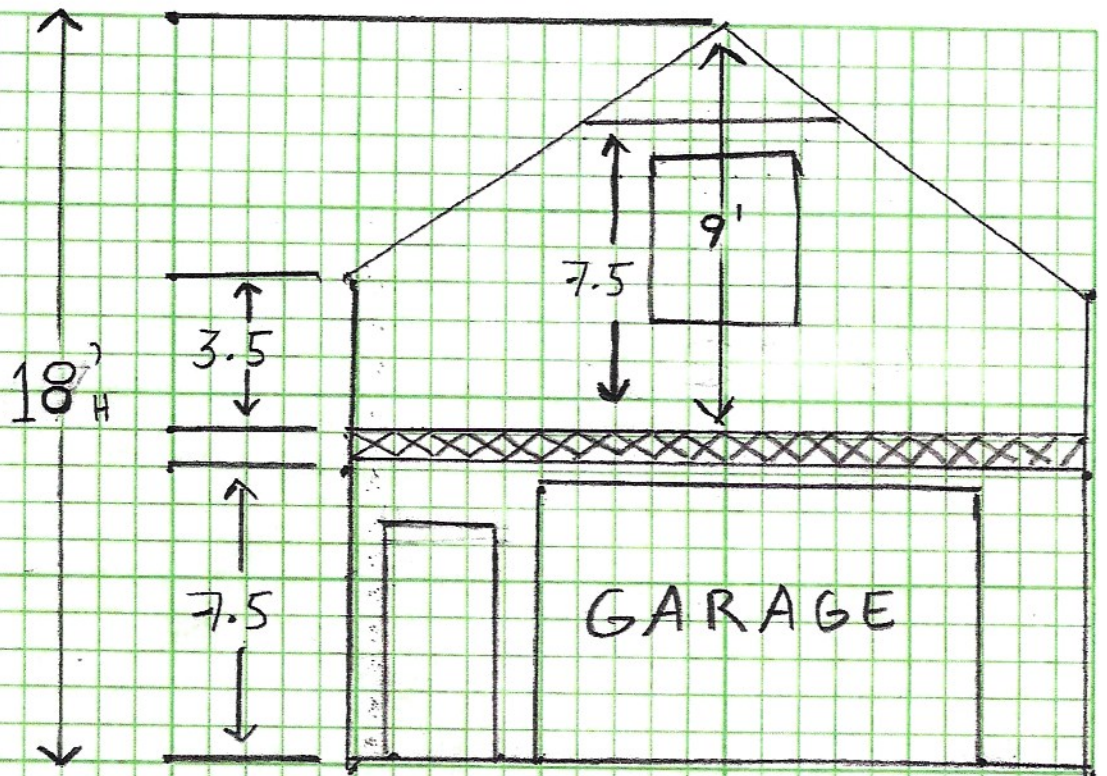
8/18/2020

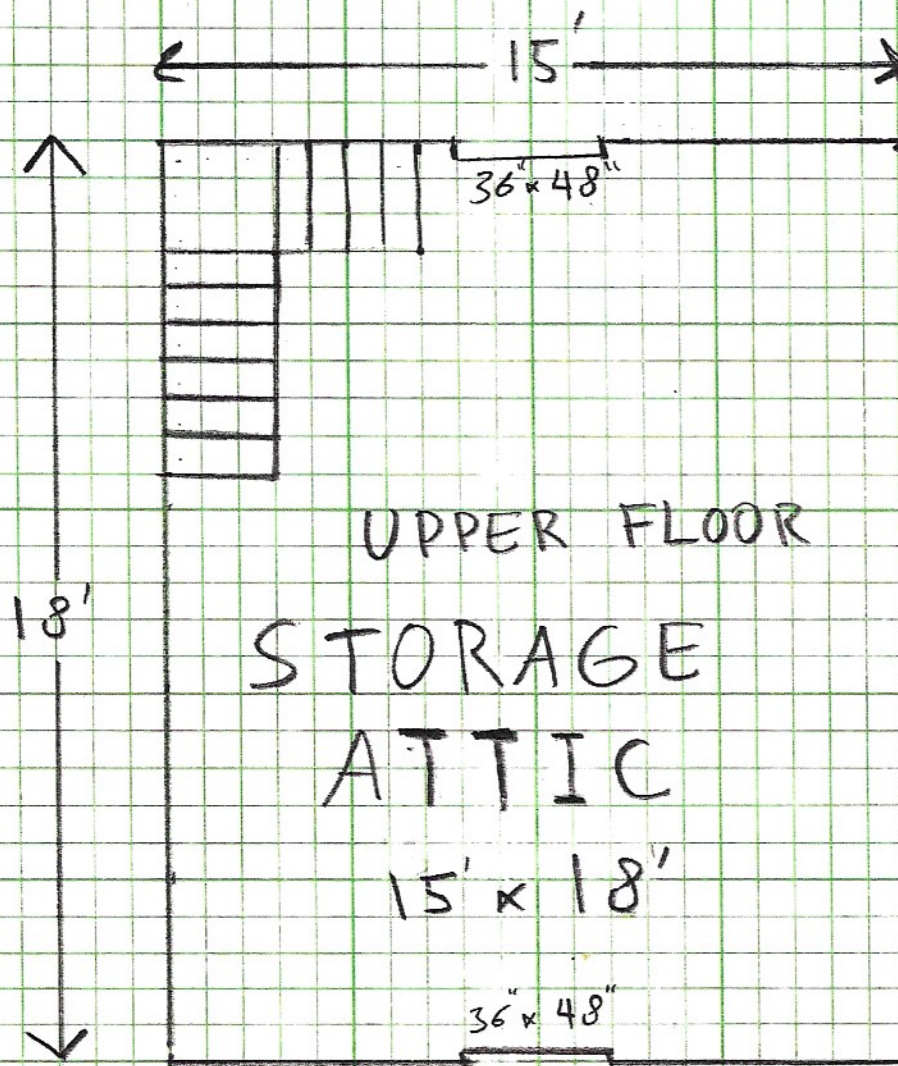
Signature

Date

EXHIBIT NO.

6





UPPER FLOOR
STORAGE
ATTIC
15' x 18'



EXHIBIT NO. 5(c)





EXHIBIT NO. 5(e)



EXHIBIT NO. 5(f)



EXHIBIT NO. 5(g)



EXHIBIT NO. 5(h)



CASE NO. A-6697

PETITION OF OMAR AND MAYRA AMADOR

EXHIBIT LIST

1. Application
2. List of adjoining/confronting property owners
3. Statement of Justification
4. Site Plan
5. (a) Main Floor-Garage
(b) Upper Floor-Storage Attic
(c)-(i) Photographs
6. DPS building permit denial
7. Certified Zoning Vicinity Map
8. (a) Envelope showing date notice mailed
(b) Notice of hearing scheduled for May 5, 2021
9. _____
10. _____
11. _____
12. _____
13. _____
14. _____
15. _____

Real Property Data Search (w1)

Search Result for MONTGOMERY COUNTY

View Map		View GroundRent Redemption		View GroundRent Registration	
Special Tax Recapture: None					
Account Identifier:		District - 12 Account Number - 00933977			
Owner Information					
Owner Name:		AMADOR OMAR A AMADOR MAYRA E		Use:	RESIDENTIAL
Mailing Address:		26900 HOWARD CHAPEL DR DAMASCUS MD 20872-		Principal Residence:	YES
				Deed Reference:	/55423/ 00394
Location & Structure Information					
Premises Address:		26900 HOWARD CHAPEL DR DAMASCUS 20872-0000		Legal Description:	PEMBROKE
Map:	Grid:	Parcel:	Neighborhood:	Subdivision:	Section:
GY11	0000	P762	12030001.16	0001	
			Block:	Lot:	Assessment Year:
					2019
Plat No:					
Plat Ref:					
Town: None					
Primary Structure Built		Above Grade Living Area		Finished Basement Area	
1950		780 SF		31,295 SF	
Property Land Area		County Use			
111					
Stories	Basement	Type	Exterior	Quality	Full/Half Bath
1	YES	STANDARD UNIT	ASBESTOS SHINGLE/	3	2 full
				Garage	Last Notice of Major Improvements
				1 Detached	
Value Information					
		Base Value	Value	Phase-in Assessments	
			As of	As of	As of
			01/01/2019	07/01/2020	07/01/2021
Land:		209,400	209,400		
Improvements		71,400	80,200		
Total:		280,800	289,600	286,667	289,600
Preferential Land:		0	0		
Transfer Information					
Seller: FEDERAL NATIONAL MORTGAGE ASSOCIATION		Date: 12/27/2017		Price: \$192,900	
Type: NON-ARMS LENGTH OTHER		Deed1: /55423/ 00394		Deed2:	
Seller: REID BRENDA S		Date: 06/21/2016		Price: \$198,057	
Type: NON-ARMS LENGTH OTHER		Deed1: /52274/ 00203		Deed2:	
Seller: OSVALDO F & R MADARIAGA		Date: 12/30/1998		Price: \$134,500	
Type: ARMS LENGTH IMPROVED		Deed1: /16616/ 00210		Deed2:	
Exemption Information					
Partial Exempt Assessments:		Class		07/01/2020	07/01/2021
County:		000		0.00	
State:		000		0.00	
Municipal:		000		0.00 0.00	0.00 0.00
Special Tax Recapture: None					
Homestead Application Information					
Homestead Application Status: No Application					
Homeowners' Tax Credit Application Information					
Homeowners' Tax Credit Application Status: No Application				Date:	

1. This screen allows you to search the Real Property database and display property records.